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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re N.O., a Person Coming
Under the Juvenile Court Law.

2d Juv. No. B291891
(Super. Ct. No. VJ46093)
(Los Angeles County)

THE PEOPLE,

Plaintiff and Respondent,

v.

N.O.,

Defendant and Appellant.

N.O. appeals from the juvenile court's judgment sustaining a petition under Welfare and Institutions Code section 602, declaring him a ward of the court, and placing him on home probation. The court found true an allegation that he had committed felony battery with serious bodily injury in violation of Penal Code section 243, subdivision (d).¹ Appellant does not

¹ All further statutory references are to the Penal Code.

dispute that he committed simple misdemeanor battery. He argues that the evidence is insufficient to show that he inflicted serious bodily injury. We affirm.

Facts

H.M. was walking home from school. Appellant “came up behind” H.M. and hit him in the side of the face. H.M. characterized the blow as a “sucker punch.” Appellant then kned H.M. in the ribs and punched him in the face about eight times.

H.M. was “knocked down” and landed on his side. He initially testified that he had “los[t] consciousness.” But the next day he testified that he could not remember whether he had lost consciousness. Before he was knocked down, he felt dizzy because of the blows to his head. After he was knocked down, he remained on the ground for about 40 seconds because he was still dizzy and needed “[t]o recover [his] vision.”

Kenny Moreno was inside his home when he heard a commotion outside. Moreno testified: I looked outside and “saw a gentleman laying on the street being beaten up. I saw [appellant] over his body repeatedly throwing punches and kicking him. And I immediately left the home to stop the fight.” “I saw the person laying in the street was motionless by the time I got outside. Not defending anymore.” Appellant was “over the body of the person still throwing punches and kicks.” I said to appellant, “If you want to hit someone hit me.” Appellant ran away.

After the attack, H.M.’s “whole head” hurt and he felt pain inside his mouth. Both eyes and his chin were swollen. His lip “was gashed.” At a hospital he received one stitch for a cut inside his mouth.

Standard of Review

“The same standard governs review of the sufficiency of evidence in adult criminal cases and juvenile cases” (*In re Matthew A.* (2008) 165 Cal.App.4th 537, 540.) “[C]ourts apply the ‘substantial evidence’ test. Under this standard, the court ‘must review the whole record in the light most favorable to the judgment below to determine whether it discloses *substantial evidence*—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.’ [Citations.] The focus of the substantial evidence test is on the *whole* record of evidence presented to the trier of fact, rather than on “‘isolated bits of evidence.’” [Citation.]” (*People v. Cuevas* (1995) 12 Cal.4th 252, 260-261.)

Substantial Evidence Supports the Juvenile Court’s Implied Finding that Appellant Lost Consciousness

Section 243, subdivision (f) defines “serious bodily injury” as “a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness” Substantial evidence supports the juvenile court’s implied finding that H.M. lost consciousness. He initially testified that he had lost consciousness. The following day he testified that he could not remember whether he had lost consciousness, but he remembered feeling dizzy and needing “[t]o recover [his] vision.” He said, “[A]s soon as I hit the floor, I was dizzy trying to get my focus back.” When Kenny Moreno went outside to break up the fight, he saw H.M. lying “motionless” in the street and “[n]ot defending anymore,” even though appellant was “over [his] body . . . still throwing punches and kicks.” It is reasonable to infer that H.M. was motionless because he had lost consciousness.

Furthermore, H.M. testified that he did not “receive any blows or strikes from [appellant] while [he] was on the ground.” But according to Kenny Moreno, appellant kicked and punched H.M. while he was on the ground. It is reasonable to infer that H.M. was not aware of these kicks and punches because he had lost consciousness. H.M. said he did not “hear anything” and did not remember “where [appellant] was” while he was lying on the ground.

H.M.’s loss of consciousness is supported by the testimony of Dr. Ryan O’Connor, appellant’s expert witness. Dr. O’Connor opined that “when someone is unconscious they don’t have a meaningful response to external stimuli.” He was asked, “If someone is lying on the ground and another individual is repeatedly kicking or hitting them and they’re not reacting to that, would that be an indication that they are unconscious potentially?” Dr. O’Connor answered, “[Y]es.”

Viewing the whole record in the light most favorable to the judgment, we conclude that a reasonable trier of fact could find beyond a reasonable doubt that appellant’s blows caused H.M. to lose consciousness. The evidence is therefore sufficient to support the juvenile court’s finding that appellant committed the felony offense of battery with serious bodily injury in violation of section 243, subdivision (d).

Disposition

The judgment is affirmed.

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We concur:

GILBERT, P. J.

YEGAN, J.

TANGEMAN, J.

Fumiko Wasserman, Judge
Superior Court County of Los Angeles

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